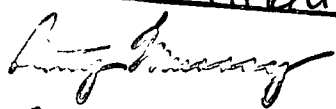



I certify that the attached is a true and  
correct copy of HR 57, which  
was filed of record on 2.22.93  
and referred to the committee on.  
Business & Industry  
  
Chief Clerk of the House

93 FEB 25 AM 9:04  
HOUSE OF REPRESENTATIVES

FILED FEB 22 1993

By 

 J.R. No. 57

A JOINT RESOLUTION

1 proposing a constitutional amendment repealing the constitutional  
2 provision limiting the consideration for which stock and bonds of a  
3 corporation may be issued.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article XII, Section 6, of the Texas Constitution  
6 is repealed.

7 SECTION 2. This proposed constitutional amendment shall be  
8 submitted to the voters at an election to be held on November 2,  
9 1993. The ballot shall be printed to provide for voting for or  
10 against the proposition: "The constitutional amendment repealing  
11 certain restrictions on the ability of corporations to raise  
12 capital."

**HOUSE**  
**COMMITTEE REPORT**  
**1<sup>st</sup> Printing**

93 MAR 25 PM 10: 35  
HOUSE OF REPRESENTATIVES

By Mowery

H.J.R. No. 57

A JOINT RESOLUTION

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2 provision limiting the consideration for which stock and bonds of a  
3 corporation may be issued.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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9 1993. The ballot shall be printed to provide for voting for or  
10 against the proposition: "The constitutional amendment repealing  
11 certain restrictions on the ability of corporations to raise  
12 capital."

COMMITTEE REPORT

The Honorable Pete Laney  
Speaker of the House of Representatives

3/23/93  
(date)

Sir:

We, your COMMITTEE ON BUSINESS AND INDUSTRY

to whom was referred H.J.R. 57 have had the same under consideration and beg to report  
(measure)

back with the recommendation that it

(X) do pass, without amendment.  
( ) do pass, with amendment(s).  
( ) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.

A fiscal note was requested. (X) yes ( ) no An author's fiscal statement was requested. ( ) yes (X) no

A criminal justice policy impact statement was requested. ( ) yes (XX) no

An equalized educational funding impact statement was requested. ( ) yes (XX) no

An actuarial impact statement was requested. ( ) yes (XX) no

A water development policy impact statement was requested. ( ) yes (XX) no

( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

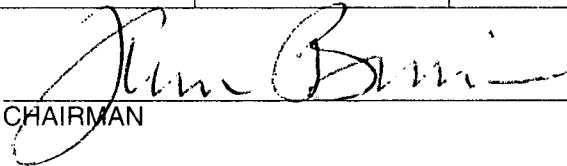
House Sponsor of Senate Measure \_\_\_\_\_

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Brimer, Ch.	X			
Mowery, V.C.	X			
Averitt	X			
Brady	X			
Corte	X			
Crabb	X			
Giddings				X
Jackson				X
Kamei	X			
Romo				X
Rudd	X			

Total

8 aye  
0 nay  
0 present, not voting  
3 absent

  
CHAIRMAN

## BILL ANALYSIS

### BACKGROUND INFORMATION

Article XII, Section 6 of the Texas Constitution provides: "No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void."

This provision was included in the 1876 Texas Constitution in response to nineteenth century stock manipulations, including the practice of "stock watering", that is, the issuance of shares at par value worth less than that value. Article 12, section 6, was intended to prevent the watering of stock by requiring that consideration for all securities issued by a corporation fall within one of the types of "real" assets referred to in that section.

Currently, creditors and shareholders are protected against this phenomenon by various accounting, securities and corporation law provisions. Consequently, this section is outdated and unnecessarily restricts the ability of Texas businesses to raise capital. Businesses often desire to issue stock or debt for other types of interests that do not fit within the section's categories of assets. For example, in the case of employee benefit plans, corporations often wish to use stock to give employees a proprietary interest or to conserve corporate cash. This stock cannot be validly issued until the employee performs services which constitute "labor done," thus it is impossible to issue the stock at the outset. Additionally, in this example, the employee may be subject to higher federal income taxes before the stock is issued if the stock increases in value. Similarly, promissory notes can be construed as prohibited under this section since they may not be considered "property actually received."

### PURPOSE

The purpose of the amendment is to repeal Article XII, Section 6, in order to allow modernization of corporate law provisions with respect to consideration for the issuance of stock.

### SECTION BY SECTION ANALYSIS

SECTION 1. Repeals Article XII, Section 6, of the Texas Constitution.

SECTION 2. Sets an election date of November 2, 1993, and provides a ballot description.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not delegate rulemaking authority to a state officer, agency, department or institution.

### SUMMARY OF COMMITTEE ACTION

H.J.R. 57 was considered in a public hearing on March 9, 1993. Testifying for the bill was Mr. Alan Bromberg, representing the Texas Business Law Foundation. Going on the record in support of H.J.R. 57 was Ms. Laura Smreker, representing the Texas Bankers Association. There were no witnesses testifying in opposition to H.J.R. 57. H.J.R. 57 was referred to a subcommittee which held a formal meeting on March 17, 1993. The subcommittee adopted a motion to report H.J.R. 57 back to the full committee with a favorable recommendation. The full committee met in a public hearing on March 23, 1993. A motion to report H.J.R. 57 to the full house with the recommendation that it do pass and be printed carried with a record vote of 8 ayes, 0 nays, 0 present-not-voting, and 3 absent.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE**  
**73rd Regular Session**

March 9, 1993

TO: Honorable Kim Brimer, Chair  
Committee on Business and Industry  
House of Representatives  
Austin, Texas

IN RE: House Joint Resolution  
No. 57  
By: Mowery

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Joint Resolution No. 57 (proposing a constitutional amendment repealing the constitutional provision limiting the consideration for which stock and bonds of a corporation may be issued) this office has determined the following:

No significant fiscal implication to the State or units of local government other than the cost of publication is anticipated.

The cost of publication of the resolution to the State is \$60,000.

Source: Comptroller of Public Accounts;  
LBB Staff: JO, JWH, DF, CFV, JOL

# HOUSE ENGROSSMENT

By Mowery

H.J.R. No. 57

## A JOINT RESOLUTION

1 proposing a constitutional amendment repealing the constitutional  
2 provision limiting the consideration for which stock and bonds of a  
3 corporation may be issued.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article XII, Section 6, of the Texas Constitution  
6 is repealed.

7 SECTION 2. This proposed constitutional amendment shall be  
8 submitted to the voters at an election to be held on November 2,  
9 1993. The ballot shall be printed to provide for voting for or  
10 against the proposition: "The constitutional amendment repealing  
11 certain restrictions on the ability of corporations to raise  
12 capital."

1 By: Mowery (Senate Sponsor - Harris of Dallas) H.J.R. No. 57  
2 (In the Senate - Received from the House April 14, 1993;  
3 April 15, 1993, read first time and referred to Committee on  
4 Jurisprudence; May 4, 1993, reported favorably by the following  
5 vote: Yeas 6, Nays 0; May 4, 1993, sent to printer.)

6 COMMITTEE VOTE

	Yea	Nay	PNV	Absent
7 Henderson	x			
8 Harris of Tarrant	x			
9 Brown	x			
10 Harris of Dallas	x			
11 Luna	x			
12 Parker				x
13 West	x			

15 A JOINT RESOLUTION

16 proposing a constitutional amendment repealing the constitutional  
17 provision limiting the consideration for which stock and bonds of a  
18 corporation may be issued.

19 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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23 submitted to the voters at an election to be held on November 2,  
24 1993. The ballot shall be printed to provide for voting for or  
25 against the proposition: "The constitutional amendment repealing  
26 certain restrictions on the ability of corporations to raise  
27 capital."

28 \* \* \* \* \*

29 Austin, Texas  
30 May 4, 1993

31 Hon. Bob Bullock  
32 President of the Senate

33 Sir:

34 We, your Committee on Jurisprudence to which was referred H.J.R.  
35 No. 57, have had the same under consideration, and I am instructed  
36 to report it back to the Senate with the recommendation that it do  
37 pass and be printed.

38 Henderson, Chairman

39 \* \* \* \* \*

40 WITNESSES

41 No witnesses appeared on H.J.R. No. 57.

**FAVORABLE  
SENATE COMMITTEE REPORT ON**

SB SCR SJR SR HB HCR HJR 57

By J. Harris  
(Author/Senate Sponsor)

\_\_\_\_\_  
(date)

We, your Committee on JURISPRUDENCE, to which was referred the attached measure,  
have on 5-4-93, had the same under consideration and I am instructed to report it  
(date of hearing)  
back with the recommendation (s) that it:

☒ do pass and be printed

☐ do pass and be ordered not printed

☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☐ yes ☐ no

A revised fiscal note was requested. ☐ yes ☐ no

An actuarial analysis was requested. ☐ yes ☐ no

Considered by subcommittee. ☐ yes ☐ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Don Henderson, Chair	<input checked="" type="checkbox"/>			
Senator Chris Harris, Vice-Chair	<input checked="" type="checkbox"/>			
Senator J. E. "Buster" Brown	<input checked="" type="checkbox"/>			
Senator O. H. "Ike" Harris	<input checked="" type="checkbox"/>			
Senator Greg Luna	<input checked="" type="checkbox"/>			
Senator Carl Parker			<input checked="" type="checkbox"/>	
Senator Royce West	<input checked="" type="checkbox"/>			
TOTAL VOTES				

6

1

**COMMITTEE ACTION**

S260 Considered in public hearing  
S270 Testimony taken

Becki Greff  
COMMITTEE CLERK

Don Henderson  
CHAIRMAN



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE**  
**73rd Regular Session**

April 16, 1993

**TO:** Honorable Don Henderson, Chair  
Committee on Jurisprudence  
Senate Chamber  
Austin, Texas

**IN RE:** House Joint Resolution  
No. 57, as engrossed  
By: Mowery

**FROM:** Jim Oliver, Director

In response to your request for a Fiscal Note on House Joint Resolution No. 57, as engrossed (proposing a constitutional amendment repealing the constitutional provision limiting the consideration for which stock and bonds of a corporation may be issued) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated other than the cost of publication.

The cost of publication of the resolution to the State is \$60,000.

Source: LBB Staff: JO, JWH, EC, JOL

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE**  
**73rd Regular Session**

March 9, 1993

TO: Honorable Kim Brimer, Chair  
Committee on Business and Industry  
House of Representatives  
Austin, Texas

IN RE: House Joint Resolution  
No. 57  
By: Mowery

FROM: Jim Oliver, Director

In response to your request for a Fiscal Note on House Joint Resolution No. 57 (proposing a constitutional amendment repealing the constitutional provision limiting the consideration for which stock and bonds of a corporation may be issued) this office has determined the following:

No significant fiscal implication to the State or units of local government other than the cost of publication is anticipated.

The cost of publication of the resolution to the State is \$60,000.

Source: Comptroller of Public Accounts;  
LBB Staff: JO, JWH, DF, CFV, JOL

P

## ENROLLED

H.J.R. No. 57

### A JOINT RESOLUTION

1 proposing a constitutional amendment repealing the constitutional  
2 provision limiting the consideration for which stock and bonds of a  
3 corporation may be issued.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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7 SECTION 2. This proposed constitutional amendment shall be  
8 submitted to the voters at an election to be held on November 2,  
9 1993. The ballot shall be printed to provide for voting for or  
10 against the proposition: "The constitutional amendment repealing  
11 certain restrictions on the ability of corporations to raise  
12 capital."

H.J.R. No. 57

---

President of the Senate

---

Speaker of the House

I certify that H.J.R. No. 57 was passed by the House on April 13, 1993, by the following vote: Yeas 139, Nays 0, 1 present, not voting.

---

Chief Clerk of the House

I certify that H.J.R. No. 57 was passed by the Senate on May 11, 1993, by the following vote: Yeas 31, Nays 0.

---

Secretary of the Senate

RECEIVED: \_\_\_\_\_

Date

---

Secretary of State

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.J.R. No. 57<sup>✓</sup> was passed by the House on  
(1)

April 13<sup>✓</sup>, 1993, by the following vote:  
(2)

Yeas 139<sup>✓</sup>, Nays 0<sup>✓</sup>, 1 present, not voting<sup>✓</sup>  
(3) (4)

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.J.R. No. 57<sup>✓</sup> was passed by the Senate on

May 11<sup>✓</sup>, 1993, by the following vote:  
(5)

Yeas 31<sup>✓</sup>, Nays 0<sup>✓</sup>  
(6) (7)

\_\_\_\_\_  
Secretary of the Senate

RECEIVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Secretary of State

\*\*\*\* Preparation: CT47;

## BILL ANALYSIS

Senate Research Center

H.J.R. 57  
By: Mowery  
Jurisprudence  
5-3-93  
Engrossed

### BACKGROUND

Section 6, Article XII of the Texas Constitution states: "No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void." This provision was included in the 1876 Texas Constitution in response to nineteenth century stock manipulations, including the practice of "stock watering," which is the issuance of shares at par value worth less than that value.

Currently, creditors and shareholders are protected against this phenomenon by various accounting, securities and corporation law provisions. Consequently, this section is outdated and unnecessarily restricts the ability of Texas businesses to raise capital. Businesses often wish to issue stock or debt for other types of interests that do not fit within the section's categories of assets.

### PURPOSE

As proposed, H.J.R. 57 requires the submission to the voters of a constitutional amendment to repeal the constitutional provision which places certain restrictions on the ability of corporations to raise capital.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Section 6, Article XII, Texas Constitution (Consideration for stock or bonds; fictitious increase).

SECTION 2. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held on November 2, 1993. Sets forth required language for the ballot.

## BILL ANALYSIS

Senate Research Center

H.J.R. 57  
By: Mowery  
Jurisprudence  
7-30-93  
Enrolled

### BACKGROUND

Currently, creditors and shareholders are protected against the watering of stock by requiring that consideration for all securities issued by a corporation fall within one of the types of "real" assets referred to in Article 12, Section 6, Texas Constitution.

### PURPOSE

As enrolled, H.J.R. 57 repeals Article XII, Section 6, Texas Constitution, regarding limiting the consideration for which stock and bonds of a corporation may be issued.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Article XII, Section 6, Texas Constitution.

SECTION 2. Requires this proposed constitutional amendment to be submitted to the voters at an election on November 2, 1993. Sets forth the required language of the ballot.

## BILL ANALYSIS

Senate Research Center

H.J.R. 57  
By: Mowery  
Jurisprudence  
9-15-93  
Enrolled

### BACKGROUND

Currently, creditors and shareholders are protected against the watering of stock by requiring that consideration for all securities issued by a corporation fall within one of the types of "real" assets referred to in Article XII, Section 6, Texas Constitution.

### PURPOSE

As enrolled, H.J.R. 57 repeals Article XII, Section 6, Texas Constitution, regarding limiting the consideration for which stock and bonds of a corporation may be issued.

### RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Article XII, Section 6, Texas Constitution.

SECTION 2. Requires the submission of this constitutional amendment to the voters at an election to be held November 2, 1993, and provides the language for the ballot.



H. J. R. No.

57

By

A. P. Mawney

HOUSE JOINT RESOLUTION

proposing a constitutional amendment repealing the constitutional provision limiting the consideration for which stock and bonds of a corporation may be issued.

FEB 22 1993 1. Filed with the Chief Clerk.

FEB 23 1993 2. Read first time and referred to Committee on

BUSINESS & INDUSTRY

MAR 23 1993 3. Reported favorably <sup>(as amended)</sup> ~~(as substituted)~~ and sent to Printer at 5:10 pm

MAR 25 1993

MAR 25 1993 4. Printed and distributed at 10:35 pm

MAR 26 1993 5. Sent to Committee on Calendars at 10:00 AM

APR 13 1993 6. Read second time (amended) and (finally) passed to Third Reading by a Record Vote of 139 yeas, 0 nays, 1 present, not voting.

7. Motion to reconsider and table the vote by which H.J.R. \_\_\_\_\_ was ordered engrossed prevailed (failed) by (Non-Record Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting).

8. Read third time (amended) and finally adopted (failed of adoption) by a Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting.

9. Caption ordered amended to conform to body of resolution.

10. Motion to reconsider and table the vote by which H.J.R. \_\_\_\_\_ was finally adopted prevailed (failed) by a (Non-Record Vote) Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

APR 13 1993

11. Ordered Engrossed at 12:42 pm

APR 13 1993

12. Engrossed.

APR 13 1993

13. Returned to Chief Clerk at \_\_\_\_\_

APR 14 1993

14. Sent to the Senate.

Betty Mawney  
Chief Clerk of the House

APR 14 1993

15. Received from the House

APR 15 1993

16. Read, referred to Committee on JURISPRUDENCE

MAY 4 1993

17. Reported favorably

18. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

19. Ordered not printed.

MAY 11 1993

20. Regular order of business suspended by unanimous consent  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

21. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

MAY 11 1993

22. Read second time passed to third reading by:  
(a viva voce vote.)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

\_\_\_\_\_ 23. Caption ordered amended to conform to body of bill.

MAY 11 1993

\_\_\_\_\_ 24. Senate and Constitutional 3-Day Rules suspended by vote of 31 yeas,  
0 nays to place bill on third reading and final passage.

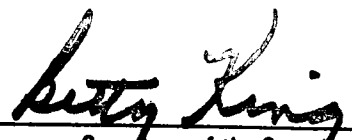
MAY 11 1993

\_\_\_\_\_ 25. Read third time and passed by

(a viva-voce vote.)  
( 31 yeas, 0 nays.)

OTHER ACTION:

OTHER ACTION:

  
Secretary of the Senate

May 11, 1993

\_\_\_\_\_ 26. Returned to the House.

MAY 12 1993

\_\_\_\_\_ 27. Received from the Senate (with amendments.)  
(as substituted.)

\_\_\_\_\_ 28. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record  
(Substitute) Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present,  
not voting).

\_\_\_\_\_ 29. Conference Committee Ordered.

\_\_\_\_\_ 30. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record  
Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

MAY 12 1993

\_\_\_\_\_ 31. Ordered Enrolled at 1:34 pm

HOUSE OF REPRESENTATIVES

93 MAR 25 PM 10:35